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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

YESH MUSIC, LLC, Plaintiff, v. GDA SPEAKERS, Defendant.	Index No.: 17-cv-1255 **COMPLAINT AND JURY DEMAND FOR DAMAGES FOR COPYRIGHT INFRINGEMENT**

Plaintiff YESH MUSIC, LLC, by and through its attorneys at GARBARINI FITZGERALD P.C., brings this Complaint and Jury Demand against defendant GDA SPEAKERS based on its intentional infringement of plaintiff's copyrighted musical works: "*First Day*" and "*the Slow Wait Part 2*" (the "Copyrighted Compositions"), pursuant to the Copyright Act and Copyright Revisions Act, 17 U.S.C. §§ 101 et seq. (the "Copyright Act" or "Act").

PARTIES

1. At all times material hereto, plaintiff Yesh Music, LLC ("YESH") was, and is, a limited liability company organized under the laws of the State of New York, with its principal offices located at 75-10 197th Street, Flushing, New York. YESH is engaged in the business of

music publishing and otherwise commercially exploiting its copyrighted sound recordings which originate from the band *The American Dollar*. The sole members of plaintiff are Richard Cupolo and John Emanuele; the artists in *The American Dollar*.

2. A copy of the certificate issued by the U.S. Copyright Office to plaintiff for "*First Day*" and "*the Slow Wait Part 2*", and the assignments of same which were registered with the U.S. Copyright Office are annexed and incorporated hereto respectively as **Exhibits 1** and **2.**

3. Plaintiff is informed and believes, and on that basis avers, that defendant GDA SPEAKERS ("GDA") is a company with its principal place of business located at 3500 Oak Lawn Ave, Dallas, TX 75219.

JURISDICTION

4. The jurisdiction of this Court is based upon 28 U.S.C. §§ 1331 and 1338 in that this controversy arises under the Copyright Act and Copyright Revision Act of 1976 (17 U.S.C. § 101 et seq.). This action is a civil action over which this court has original jurisdiction.

Personal Jurisdiction - CPLR § 302(a)(1)

5. This Court has personal jurisdiction pursuant to CPLR § 302(a)(1).

6. GDA describes itself as follows: "GDA Speakers is a global speakers bureau established in 1999. Based in the heart of Dallas, Texas, we are one of the top speakers bureaus in the world, representing more than 5,000 speakers."

7. Many of those speakers reside in New York City.

8. For example, GDA speakers Bruce Feiler, Elliot Kotek, David Polinchuk, and Jim Carrol reside in this Judicial District. These are just a few of the scores of New York residents that work for GDA.

9. GDA also provides frequent speaking engagements in this Judicial District.

10. Defendant created, reproduced, and distributed two advertisements that synchronized at least one of plaintiff's Copyrighted Compositions (the "Subject Advertisements").

11. The Subject Advertisements were distributed within this Judicial District, and otherwise directed to this Judicial District.

12. Defendant directs its sales at New York through its interactive website <www.gdaspeakers.com>.

13. Defendant contracts with New York on a regular basis.

14. Both of the Subject advertisements have links to the GDA website where the user can book speakers.

15. There is a nexus between the advertisements and the New York sales.

16. Being that defendant transacts business within the state or contracts anywhere to supply goods or services in the state – this Court has jurisdiction pursuant to CPLR § 302 (a)(1).

This Court Has Jurisdiction Pursuant to CPLR § 302(a)(3)

17. CPLR § 302 (a)(3) authorizes this Court to exercise jurisdiction over nondomiciliaries who commit a tortious act without the state causing injury to person or property within the state, except as to a cause of action for defamation of character arising from the act, if it: (i) regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in the state, or (ii) expects or should reasonably expect the act to have consequences in the state and derives substantial revenue from interstate or international commerce.

18. GDA synchronized, reproduced, and distributed the Subject Advertisements

through YouTube. This is a tort (copyright infringement) committed without the state.

19. The copyright owner resides in this Judicial District, and the injury was felt in this Judicial District.

20. Defendant regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in the state.

21. A significant number of defendant's speakers reside in New York and defendant generates significant revenue from New York engagements.

22. Jurisdiction is conferred pursuant to CPLR 302(a)(3) subsection (i).

23. Defendant identified the plaintiff on each of the Subject Advertisements, and therefore expected or should have reasonably expected its acts to have consequences in New York State and defendant derives substantial revenue from interstate or international commerce.

24. Jurisdiction is conferred pursuant to CPLR 302(a)(3) subsection (ii).

VENUE

25. Venue in this District is proper under 28 U.S.C. § 1391(b) and (c) and/or 28 U.S.C. § 1400(a).

26. Plaintiff has the right to bring the within action pursuant to 17 U.S.C. § 501(b).

27. Plaintiff's copyrighted recordings were registered prior to the alleged infringement, and satisfies the registration prerequisite under 17 U.S.C. 412(c).

FACTS

28. Defendant is in the business of booking speakers for engagements throughout the United States.

29. Defendant created the Subject Advertisements, and reproduced and distributed the Subject Advertisements.

30. The Subject Advertisements can be at:

a. **Found at**: https://www.youtube.com/watch?v=rqcv7wTCqNY
Uploaded by: GDA SPEAKERS
Title: "Ryan Estis- Sales Training & Transformation Preview"
Recording Infringed: *"First Day"* from start to 0:38, and again from 2:07 to end
Recording Infringed: *Song: "The Slow Wait Part 2"* looped from 0:38 to 2:07

b. **Found at**: https://www.youtube.com/watch?v=_JweS6-IwJY
Uploaded by: GDA SPEAKERS
Title: "Ryan Estis Visits GDA Speakers"
Recording Infringed: "*First Day*" 0:12 to 0:22, illegal derivative created by transposing recording to a higher pitch from original.

31. Both of the Subject advertisements have links to the GDA website where the user can book speakers.

32. GDA had no authority or license to use the Copyrighted Compositions.

33. Plaintiff discovered the Subject Advertisements on or about July 27, 2016.

34. On July 27, 2016, immediately after discovery, plaintiff contacted defendant by email stating:

> From: Yesh Music Licensing [mailto:contact@yeshmusic.com]
> Sent: Wednesday, July 27, 2016 9:49 PM
> To: Gail Davis <gail@gdaspeakers.com>
> Subject: GDA Speakers Video
>
> Hello, we noticed GDA Speakers is displaying video content paired with the music of The American Dollar, whom we represent. We do not have any record of granting a license for these pieces, we request that you kindly forward your license information for the use of their music to our email address: contact@yeshmusic.com
>
> Thank You, Yesh Music Licensing.

See **Exhibit 3**.

35. Defendant immediately responded as follows:

> From: Gail Davis gail@gdaspeakers.com
> Subject: RE: GDA Speakers Video
> Date: July 27, 2016 at 10:54 PM
> To: Yesh Music Licensing contact@yeshmusic.com
>
> I have no idea what video you are referring to....can you please be more specific then I can access all associated permissions. Gail
>
> Gail Davis Founder and President
> 3500 Oak Lawn, Suite 740 Dallas, TX 75219 D: (214) 420-5111 F: (214) 420-5792 gail@gdaspeakers.com gdaspeakers.com

See **Exhibit 3**.

36. Defendant doesn't upload a significant amount of videos, and they identify plaintiff on each video. Playing ignorant further demonstrates an intention to infringe.

37. Defendant made no attempt to remove the advertisements, and each is still active on the Internet as of the date of this Complaint.

FIRST CLAIM FOR RELIEF
COPYRIGHT INFRINGEMENT

38. Plaintiff incorporates the allegations contained in the preceding paragraphs as if set forth at length here.

39. Defendant has, without a synchronization, or any other, license synchronized plaintiff's copyrighted recordings "*First Day*" and "*the Slow Wait Part 2*", to two advertisements.

40. Defendant, without license or authority, reproduced and distributed the Subject Advertisements.

41. It cannot be disputed plaintiff has a valid, registered copyright, for each recording, and that defendant has synchronized, reproduced, and distributed plaintiff's copyrighted recordings without a license, thus infringing plaintiff's rights under the Copyright Act.

42. Irreparable injury is presumed here as plaintiff has established a prima facie case of copyright infringement.

43. Even after defendant was put on notice of the infringement over seven months before the date before this action was filed; it elected to continue to synchronize, reproduce, distribute, and publicly perform plaintiff's copyrighted recordings.

44. The synchronization, reproduction, and/or distribution, of the copyrighted recordings was clearly intentional within the meaning of 17 U.S.C. § 504(c)(2) for the purposes of enhancing statutory damages.

45. Defendant was put on direct notice of its infringing activity, but took no action.

46. Defendant's knowledge may be inferred from their conduct as well as their reckless disregard of plaintiff's rights (rather than actual knowledge of infringement), which suffices to warrant award of the enhanced damages.

47. As a direct and proximate result of defendant's infringement, plaintiff has incurred actual damages in the form of licensing fees, and the forced association with plaintiff despite the fact that plaintiff has licensing deals with other shoe companies.

48. Plaintiff may recover its actual damages, and defendant's profit to be determined at trial. Plaintiff may also elect to recover statutory damages pursuant to 17 U.S.C. § 504(c)(2) for willful infringement of up to $150,000, but not less than $30,000.

49. Plaintiff also seeks its attorneys' fees and costs, as well as pre-post judgment interest.

SECOND CLAIM FOR RELIEF
VIOLATION OF DMCA OF 1998, AS AMENDED,
17 U.S.C. § 1201, et seq.

50. Plaintiff incorporates the allegations contained in the preceding paragraphs as if

set forth at length here.

51. Section 1202 provides in part: (a) no person shall knowingly and with the intent to induce, enable, facilitate or conceal infringement - (1) provide copyright information that is false, or (2) distribute or import for distribution copyright management information that is false. (b) No person shall, without the authority of the copyright owner or the law - (1) intentionally remove or alter any copyright management information, [or] (3) distribute . . . works [or] copies of works . . . knowing that copyright management information has been removed or altered without authority of the copyright owner or the law, knowing, or having reasonable grounds to know, that it will induce, enable, facilitate, or conceal an infringement of any right under this title. 17 U.S.C. § 1202(a)-(b).

52. Copyright management information is defined as "information which identifies the work, the author of the work, the owner of any right in the work, or information about the terms and conditions of use of the work . . . which is attached to a copy of a work or appears in connection with communication of the work to the public." S.Rep. No. 105-190 (1988), note 18.

53. A defendant violates the DMCA each time it wrongfully distributed a copyrighted work.

54. Defendant also misstated the terms and conditions of using each copyrighted work.

55. Defendant violated section 1202, upon information and belief, by abstracting the two recordings from YouTube thereby removing and/or altering the anti-circumvention software.

56. Defendant did the forgoing with the intent to conceal the infringements.

57. Each time defendant uploaded an advertisement it committed a violation of section 1202.

58. A "[c]omplaining party may elect to recover an award of statutory damages for each violation of section 1202 in the sum of not less than $2,500 or more than $25,000." 17 U.S.C. § 1203(c)(3)(B).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays this Court enter an order awarding plaintiff:

1) restitution of defendant's unlawful proceeds, including defendant's gross profits;

2) compensatory damages to plaintiff in an amount to be ascertained at trial;

3) one statutory damage award per work infringed, including but not limited to all penalties authorized by the Copyright Act (17 U.S.C. §§ 504(c)(1), and 504(c)(2)) at plaintiff's election;

4) an award of statutory damages for each violation by defendant of the DMCA, 17 U.S.C. § 1202;

5) plaintiff's reasonable attorneys' fees and costs (17 U.S.C. § 505);

6) pre- and post-judgment interest to the extent allowable; and,

7) such other and further relief that the Court may deem just and proper.

JURY DEMAND

Plaintiff hereby demands a trial by jury of all issues so triable.

Dated: March 6, 2017

GARBARINI FITZGERALD P.C.

By: [signature]

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